

## REMARKS/ARGUMENTS

In this Amendment, in conjunction with the filing of a Request for Continued Examination, Applicants have amended *both* independent apparatus claims 20, 30, and 38 *and* withdrawn independent method claims 31 and 39 to include the same special technical feature where the pores are formed by an evaporated additive to a material of the first layer.

Thus, Applicants respectfully submit that because both the apparatus claims and the method claims include this same special technical feature, that both the apparatus claims and the method claims should be examined in this patent application.

In the Office Action, based on the Examiner's broad argument that the prior art discloses pores in the first layer, the Examiner argues that this feature is not a special technical feature, and thus, withdrawal of the method claims is proper. However, Applicants respectfully submit that even if the Examiner can make this broad argument that pores are disclosed in the prior art, the prior art does not disclose Applicants' now most-particularly claimed feature where the pores are formed by an evaporated additive to a material of the first layer. Thus, Applicants respectfully submit that the amended independent apparatus and method claims both claim the same special technical feature, and as such, in this National Phase PCT patent application, since this same special technical feature is a contribution over the prior art under PCT Rule 13.1, Applicants again respectfully request that withdrawn method claims 31-37 and 39 be re-entered in the application.

Applicants also respectfully submit that even if the Examiner considered this feature in the context of previously pending dependent claims 40, 42, and 44, the Examiner considered this feature in the context of these apparatus claims as process limitations which did not provide structural limitations to the claimed product. However, the Examiner did not argue that this feature is disclosed in the prior art. Therefore, Applicants respectfully submit that regardless of whether the Examiner provides patentable weight to this feature in the apparatus claims, under the rules of the PCT, this feature is a special technical

feature of both the apparatus claims and the method claims since it is a contribution over the prior art under PCT Rule 13.1. As such, Applicants respectfully submit that as a minimum, the Examiner should examine both the apparatus and method claims in Applicants' Request for Continued Examination.

Applicants respectfully submit that even if the Examiner again argues, after further examination, that the feature should be treated under U.S. law as product-by-process language for the apparatus claims, this feature should also be examined as a method in the method claims, and also respectfully submit that this method is not disclosed in the prior art. In the Office Action, at most, the Examiner argues that deposition via the methods taught by the prior art of record "are considered to result in at least some porosity". However, Applicants respectfully submit that even if the methods of the prior art result in at least some porosity, these methods of the prior art do not form the pores as now most-particularly claimed by Applicants.

Further in this Amendment, Applicants have cancelled dependent claims 41, 43, and 45 to obviate the Examiner's indefiniteness rejections. Further yet, Applicants have modified the feature of now-cancelled dependent claims 40, 42, and 44 when including this feature in the independent claims. As such, Applicants also respectfully submit that this indefiniteness issue has now also been obviated.

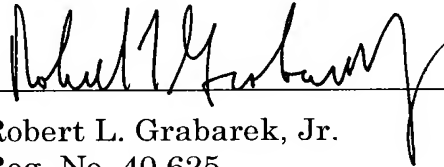
If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

As provided for above, this paper includes a petition for an Extension of Time sufficient to effect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket No. 011235.57497US).

Respectfully submitted,  
CROWELL & MORING LLP

Dated: February 1, 2011

By

A handwritten signature in black ink, appearing to read "Robert L. Grabarek, Jr.", written over a horizontal line.

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